

Message Text

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ACTION NEA-16

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC IMMEDIATE 2371

C O N F I D E N T I A L NEW DELHI 8681

FOLNG SENT IMMEDIATE NEW DELHI FROM CALCUTTA DTD 29 JUN.

QUOTE: CALCUTTA 1337

E.O. 11652: GDS

TAGS: PFOR CASC IN

SUBJECT: HARCOS/FLETCHER: APPEAL DATE MOVED UP

REF: CALCUTTA 1322 AND 1300

1. SENIOR CONSULAR SECTION FSL NAYA WAS CALLED FRIDAY NIGHT, JUNE 28 BY DEFENSE LAWYER DUDHWEWALA AND TOLD THE FOLLOWING. DUDHWEWALA AND DEFENSE LAWYER BHOSE HAD BEEN SUMMONED TO THE HIGH COURT BY JUSTICE TALUKDAR (WHO IS TO HEAR THE APPEAL) AND TOLD THAT, SINCE THE CHIEF JUSTICE WAS TAKING A PERSONAL INTEREST IN THE CASE, THE APPEAL HAS BEEN MOVED UP AND WILL NOW BE HEARD ON JULY 1 AND 2 (INSTEAD OF JULY 18 AS EARLIER REPORTED). DUDHWEWALA THOUGHT A DECISION WOULD BE MADE QUICKLY (HE THOUGHT THE PROSECUTION'S APPEAL WOULD BE DENIED, I.E., THAT DEFENSE WOULD BE GIVEN ACCESS TO CHARGES AND SUPPORTING MATERIAL EVIDENCE; WE DOUBT THIS). HE EXPECTS THE FILES TO BE REFERRED TO THE CHIEF METROPOLITAN MAGISTRATE ON/ABOUT JULY 5. HE FURTHER EXPECTS THE CHIEF METROPOLITAN MAGISTRATE TO SEND THE CASE TO THE CITY SESSIONS COURT SOON THEREAFTER AND THOUGH THE ACTUAL TRIAL MIGHT BEGIN ON/ABOUT JULY 15.

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2. I HAD PREVIOUSLY SCHEDULED AN EARLY MORNING JUNE 29 AP-

POINTMENT WITH FLETCHER'S SENIOR DEFENSE LAWYER, FORMER GOWB FINANCE MINISTER SHANKAR DAS BENERJEE. I HAD INITIALLY SOUGHT MEETING IN ORDER TO ELICIT HIS JUDGMENT ABOUT THE SPEEDY TRIAL ISSUE AND TO FIND OUT WHETHER IT WAS TRUE (AS WE HAD HEARD FROM A COUPLE OF LEGAL SOURCES) THAT HE HAS NOT TAKEN MUCH INTEREST IN THE CASE UP TO THIS POINT. BENERJEE DID NOT SEEM PARTICULARLY WELL-INFORMED ABOUT THE CASE AND HAD NOT BEEN INFORMED ABOUT THE DEVELOPMENTS DESCRIBED IN PARA 1, AFTER I DESCRIBED THEM, HE CALLED BHOSE IN MY PRESENCE AND AFTER A LONG CONVERSATION WITH HIM CONFIRMED THAT JUSTICE TALUKDAR HAD TOLD BHOSE THE APPEAL HAD BEEN MOVED UP TO EARLY NEXT WEEK (BECAUSE THE AMERICAN CONSUL GENERAL HAD WRITTEN TO THE CHIEF JUSTICE, ACCORDING TO BHOSE), BUT BHOSE'S PROGNOSTICATION WAS THAT THE CASE MIGHT REACH CITY SESSIONS COURT IN A MONTH'S TIME. (EVEN IF HIS ESTIMATE RATHER THAN DUDHWEWALA'S PROVES RIGHT, THIS WOULD STILL BE ONLY ABOUT HALF THE USUAL TIME FOR HANDLING SUCH AN APPEAL).

3. BENERJEE ASKED ME WHAT I THOUGHT THE TWO MEN HAD BEEN DOING. I SAID I OFFICIALLY COULDN'T MAKE ANY COMMENT BUT THAT THEY HAD APPARENTLY TOLD DUDHWEWALA, WHO IN TURN HAD TOLD THE PRESS THAT THEY WERE SMUGGLING NARCOTICS. I SAID SPEAKING PERSONALLY I THOUGHT THIS MADE SENSE. I REITERATED THAT THEY HAD NO CONNECTION WITH THE USG. I ALSO TOLD BENERJEE THAT OUR INTEREST IN THE CASE HAD TO DO WITH MATTERS OF CONSULAR ACCESS, SPEEDY TRIAL AND THE HEALTH AND WELFARE OF BOTH AMERICAN CITIZENS--NOT WITH THE MERITS OF THE CHARGES, WHATEVER THEY WERE.

4. BENERJEE SAID HE HAD RECEIVED A LETTER FROM AMERICA (I BELIEVE FROM MISS DONOVAN) ASKING IF IT WERE TRUE THAT THE CHARGES HAD BEEN CHANGED TO SMUGGLING. HE SAID HE HAD TOLD HER THERE WAS NO CHANGE, THAT THE TWO WERE BEING CHARGED UNDER THE OFFICIAL SECRETS ACT. I SAID THAT THERE HAD BEEN SOME PRESS SPECULATION THAT THE CHARGES HAD BEEN CHANGED BUT WE HAD HAD NO OFFICIAL INDICATION OF ANY CHANGE, STRESSING THAT WE DID NOT KNOW WHAT THE SPECIFIC CHARGES WERE--THE FACT THAT HARCOS WAS FOUND IN A PROHIBITED AREA WOULD BE ENOUGH TO PUT THE CASE UNDER THAT ACT, WE HAD BEEN TOLD.

5. I ASKED BENERJEE IF HE DIDN'T THINK THE DEFENSE LAWYERS
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COULD PASS WORD TO HARCOS AND FLETCHER THAT THE APPEAL HEARING HAD BEEN MOVED UP AND THUS THE TRIAL WOULD BEGIN SOONER AND ASK THEM TO CALL OFF THEIR HUNGER STRIKE. AFTER SOME CONSIDERATION, BANERJEE SAID "THAT WILL BE CONVEYED TO THEM" (IT WAS UNCLEAR WHETHER HE MEANT ONLY THE FACT OF SPEEDED UP PROCEDURE WOULD BE CONVEYED, OR WHETHER HE WAS ALSO AGREEING THAT THEY WOULD BE ASKED TO END THE STRIKE).

6. COMMENT: WE OF COURSE ARE PLEASED THAT THE APPEAL HEARING HAS BEEN SPEEDED UP BY THE CHIEF JUSTICE AS PER HIS ASSURANCES TO ME (REFTELS). AT THE SAME TIME I AM CONCERNED THAT THE CONFIDENTIALITY OF MY EXCHANGES WITH THE CHIEF JUSTICE WHICH HE HAD ASKED FOR (CALCUTTA 1330) SEEM TO HAVE BEEN BROKEN. WE CAN ONLY HOPE THAT THE CHIEF JUSTICE CHANGED HIS MIND, BUT TALUKDAR MAY HAVE MISUNDERSTOOD AND REVEALED THE INFORMATION INADVERTENTLY.
PICKERING UNQUOTE SCHNEIDER

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